



W.P.No.35937 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.35937 of 2005
and W.P.M.P.No.38748 of 2005

1. T.Ganesan (deceased)
2. G.Vasanthi
3. G.Chandramohan
4. G.Ramalingam
(P2 to P4 substituted as
LRs of deceased sole petitioner
vide order dated 05.02.2021
made in W.M.P.No.2715 of 2021
in W.P.No.35937 of 2005)

... Petitioners

-Vs-

1. The Director of School Education,
D.P.I.Compound,
College Road, Chennai-600 006.
2. The Chief Educational Officer,
Nagapattinam District,
Nagapattinam.
3. The Head Master,
T.G.N.Municipal Higher
Secondary School,
Mayiladuthurai-609 001.
4. The Accountant General,
(Accounts and Entitlements),
Tamil Nadu,



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No.362, Anna Salai,
Chennai-600 018.

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5. The Branch Officer,
O/o. The Accountant General,
(Accounts and Entitlements),
Tamil Nadu,
No.362, Anna Salai,
Chennai-600 018.

6. The District Treasury Officer,
Nagapattinam.

7. The Treasury Officer,
Nagapattinam.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, to call for all the relevant records relating to the Impugned Order issued in proceedings No. AG (A and E)/PEN. P12/2/G4-730/RTD/2005-2006/6697 dated 15.09.2005 passed by the 5th respondent herein and quash the same as arbitrary, unreasonable, improper illegal against the established rules and regulations of the respondents, violating the principles of Natural Justice and thereby directing the respondents to accept the pension proposal of the petitioner forwarded by the 3rd respondent in his proceedings in R.C.No.243/A1/2005 dated 25.08.2005 on sanctioning and disburse his pensionary benefits to the petitioner which are all legally entitled to him without delay.

For Petitioners : Mr.K.Venkataramani, Senior Counsel
for Mr.S.Srinivasan

For R1 to R3 : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

For R4 and R5 : Mr.T.Ravikumar



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ORDER

This writ petition has been filed challenging the order passed by the fifth respondent dated 15.09.2005, thereby revised his pension.

2. Pending writ petition, the sole petitioner died and the legal representatives were substituted in the place of the deceased petitioner.

3. Heard the learned counsel for the petitioners and the learned Additional Government Pleader for the respondents 1 to 3 and the learned counsel for the respondents 4 and 5 and perused the materials available on record.

4. The first petitioner was appointed as Head Teacher on 27.03.1968. Thereafter, he was posted as Secondary Grade Assistant on 05.08.1971. Again, he was promoted to the post of Secondary Grade Teacher on 05.01.1973. Thereafter, he was promoted to the post of Head Master on 19.03.1977. He had worked as Head Master in various Municipal Elementary Schools till 17.08.1982. Thereafter, he had worked as Secondary Grade Teacher from 18.08.1982 till his date of superannuation. The petitioner's salary was re-fixed



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with effect from 01.04.1978. Thereafter, as per the proceedings dated 05.07.1991, the pay of the Teachers, who were juniors to the first petitioner, have been fixed consequent to G.O.Ms.No.1381 dated 05.10.1990. Since he was drawing lesser pay than his junior, he submitted a representation. It was not considered and as such, he approached the Tamil Nadu Administrative Tribunal, Chennai in O.A.No.1097 of 1992. The Tribunal by an order dated 22.04.1996, held that though the applicant's pay has been fixed as per the revised scale of pay, his service prior to 01.06.1988 were not taken into consideration for grant of selection grade as on 01.06.1988. Therefore, the Tribunal directed the respondents to fix the pay of the applicant in selection and special grade as per G.O.Ms.No.1381, Education dated 05.10.1990. The said order was duly complied with and the petitioner was granted Special Grade Pay scale in the cadre of Elementary School Head Master. However, the second respondent had cancelled the re-fixation of pay orders and directed to recover the increments paid to the petitioner. Therefore, again the petitioner was constrained to challenge the order before the Tamil Nadu Administrative Tribunal in O.A.No.4878 of 1999. The Tribunal granted an interim order of stay.



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5. Pursuant to the compliance of the interim order passed by the Tribunal, the second respondent, by its proceedings dated 09.09.1999, in Na.Ka.No.2107/A4/98, had passed an order to stop the recovery proceedings and directed to pay earlier salary which was paid to the first petitioner. He had been paid salary till his attainment of superannuation viz., 31.08.2005. His service was extended till 31.05.2006. As per the usual procedure and rules, after his retirement, the third respondent forwarded his pension proposal dated 25.08.2005 to the fourth respondent to sanction his pension, Death cum Retirement Gratuity and Commutation amount to the first petitioner. His last drawn pay was mentioned as Rs.11,025/- and the pension was fixed at a sum of Rs.3,657/-. But the fourth respondent, by its proceedings dated 15.09.2005, fixed his pension as Rs.2,950/- by taking into account a sum of Rs.5,900/- as his last drawn salary, on the ground that the first petitioner was eligible only for Special Grade Scale in the post of the Secondary Grade Teacher. It was further held that the facts may be reviewed and pay revise excess paid pay and allowances may be intimated, pending receipt of reply to avoid hardship to the pensioner and PWD Rs.5,900/- is reckoned for pensionary benefits. Pursuant to the same, the fifth respondent had issued an order by fixing his pension as Rs.2,950/-.



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6. A perusal of the counter filed by the fifth respondent revealed that the petitioner had served only for five years and five months as Headmaster in his entire service and he was only a Secondary Grade Assistant from 18.08.1982. As per the G.O.Ms.No.1381 Education dated 05.10.1990, the petitioner was not entitled for Special Grade and Selection Grade, since he was not serving as a Headmaster as on 01.06.1988. The G.O says that the Selection and Special Grades to those Headmasters of Elementary Schools who were in position as Headmaster as on 01.06.1988 by counting entire Secondary Grade Assistant service and Headmaster service prior to 01.06.1988. Accordingly, the pensionary benefit of the petitioner was revised taking his last drawn pay as Rs.8,300/- and revised the order passed on 20.07.2006. Accordingly, his monthly pension was fixed as Rs.4130/-, Commuted Value of Pension as Rs.1,72,716/- and DCRG as Rs.2,28,707/-. Accordingly, all the amounts were disbursed to the petitioner in the month of February, 2007.

7. A perusal of the counter filed by the second respondent revealed that the deceased petitioner was appointed as Head Teacher on 27.03.1968 temporarily. Thereafter, the services of the petitioner was regularized with effect from 05.08.1971. Thereafter, the petitioner was granted Selection Grade in the post of Secondary Grade with effect from 01.06.1988. As per the order of



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the second respondent, the petitioner was granted Special Grade in the post of

Secondary Grade Teacher with effect from 21.12.1992 vide proceedings dated

10.02.1993. Thereafter, the petitioner was granted Selection Grade and Special

Grade in the post of Primary School Headmaster with effect from 01.06.1988

and 21.12.1996 respectively. Subsequently, the Special Grade granted in the

post of Primary School Headmaster was cancelled by the second respondent.

The third respondent had issued pay fixation order, in which the pay of the

petitioner was fixed in the Selection Grade Post as Primary School Head

Master with effect from 01.06.1988 and in the Special Grade in the post of

Primary School Headmaster with effect from 01.01.1991. The petitioner had

retired from service on attaining the age of superannuation on 31.08.2005. The

third respondent had sent proposal for the sanction of retirement benefits. The

Accountant General, Chennai has admitted the Pensionary benefits adopting

the last pay drawn as Rs.8,300/-. The Accountant General has pointed out that

the petitioner is not entitled for Special Grade in the post of Primary School

Headmaster vide proceedings dated 15.09.2005.

8. A perusal of the order passed by the Tamil Nadu Administrative Tribunal revealed that though the petitioner's pay has been fixed as per the revised scale of pay, his service prior to 01.06.1988 were not taken into



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consideration for selection grade as on 01.06.1988. Therefore, his case was considered and the impugned orders rejecting his request was not sustained and quashed the order. Further, the Tribunal directed the respondents to fix the pay of the petitioner in Selection and Special Grade as per G.O.Ms.No.1381, Education dated 05.10.1990 taking into account his whole service in the cadre of Secondary Grade Teachers prior to 01.06.1988. It became final and no appeal was filed by the respondents.

9. In compliance of the said order and taking into account the total service put up by the petitioner as Secondary Grade Assistant, Secondary Grade Teacher, Headmaster etc, till the date of his superannuation, by the proceedings dated 04.02.1997, the second respondent directed the respective Headmasters to order to revise the scale of pay and to disburse the arrears of salary if any. Accordingly, the petitioner was paid the Selection Grade and Special Grade pay by the order dated 20.02.1997 passed by the Headmaster of the Municipal Higher Secondary School, Mayiladuthurai. Further, again by the order dated 11.08.1999, the second respondent cancelled the earlier order dated 04.02.1997 and revised the scale of pay of the petitioner and also ordered to recover excess amount paid to him. It was once again challenged before the Tamil Nadu Administrative Tribunal by the petitioner in O.A.No. 4878 of 1999 and an



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interim order of stay was granted. As per the interim order, by the communication 09.09.1999, the second respondent stopped the recovery order dated 11.08.1999. Even then the respondents, passed the impugned order that too without any notice or by granting a reasonable opportunity to the petitioner. It clearly violates the Principles of natural justice.

10. In this regard, the learned Senior Counsel appearing for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.7115 of 2010** in the case of **Thomas Daniel Vs State of Kerala and Others**, wherein the Hon'ble Supreme Court of India held that with regards to the issue of monetary gains wrongly extended to the beneficiary employees as follows:-

*“ (13) In **State of Punjab and Others v. Rafiq Masih (White Washer) and Others** wherein this Court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at the behest of the recipient. This Court considered situations of hardship caused to an employee, if recovery is directed to reimburse the employer and disallowed the same, exempting the beneficiary employees from such recovery. It was held thus:*

“8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the



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employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

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18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

11. In the case on hand, it is not the case of the respondents that on account of any misrepresentation or fraud committed by the petitioner, excess amount was paid and his pension was fixed. On the implementation of the order passed by the Tamil Nadu Administrative Tribunal in O.S.No.1097 of 1992 dated 22.04.1996, his salary was re-fixed and accordingly, his pension proposal was sent. Even according to the respondents, the petitioner was wrongly given



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Selection Grade and Special Grade due to mistake by wrong interpretation.

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12. In view of the above, the impugned order cannot be sustained and is liable to be quashed. Accordingly, the Impugned Order in proceedings No. AG (A and E)/PEN. P12/2/G4-730/RTD/2005-2006/6697 dated 15.09.2005 passed by the 5th respondent herein, is hereby quashed. The respondents 2 to 4 herein are directed to sanction and disburse the pensionary benefits to the petitioners as per the proposal forwarded by the third respondent dated 25.08.2005 in R.C.No.243/A1/2005, within a period of twelve weeks from the date of receipt of a copy of this order.

13. Accordingly, this writ petition is allowed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

20.09.2023

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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